

**CITY OF LODI  
INFORMAL INFORMATIONAL MEETING  
"SHIRTSLEEVE" SESSION  
CARNEGIE FORUM, 305 WEST PINE STREET  
TUESDAY, JANUARY 29, 2002**

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, January 29, 2002 commencing at 7:06 a.m.

**A. ROLL CALL**

Present: Council Members – Hitchcock (arrived at 7:15 a.m.), Howard, Land, Nakanishi, and Mayor Pennino

Absent: Council Members – None

Also Present: City Manager Flynn and City Clerk Blackston

**B. CITY COUNCIL CALENDAR UPDATE**

City Clerk Blackston reviewed the weekly calendar (filed).

**C. TOPIC(S)**

**C-1 "Solid Waste Contract"**

Public Works Director Prima reported that staff has prepared an entirely new franchise agreement between the City and Central Valley Waste Services (CVWS). It is currently in draft form and any changes will be identified when the agreement is brought before Council for approval. The new agreement was restructured to eliminate the notion of commercial versus residential, and rates for service are now identical. A cap was imposed on the number of recycling carts that customers can have at no charge. Two recycling containers will be provided without cost to customers who have metal container service. Proposed annual rate increases of 1.5% will be in effect April 2002, 2003, and 2004. In addition, rates will be adjusted according to 80% of the San Francisco Bay Area Consumer Price Index. He noted that since the inception of the Index in 1967, the annual increase has averaged 1.91%.

Mr. Prima stated that the new agreement includes the recycling education awareness program, AB939 reporting services, and the annual curb-side clean up, and dump days. An illegal pick up program has been added to the agreement, as well as leaf disposal. A new annual voucher program has also been added, which will allow customers to take one load of garbage to the transfer station at no cost. Insurance coverage has been increased to \$2 million for general liability and \$5 million for auto insurance. A one-time fee for roll off boxes will be instituted for homeowners. Mr. Prima stated that a rate schedule will be provided to Council separately and noted that staff still needs to address low-income rates.

Council Member Howard commented that she was pleased to know that staff was reviewing low-income rates and ensuring that the fee will cover costs. Referencing Section 5, g, of the agreement she questioned whether it is the City's current practice to prosecute for illegal dumping. Mr. Prima replied that it is not addressed in the current contract.

Council Member Howard noted that there is a fee when customers enter the transfer station and asked whether an increase in this cost is anticipated.

Tom Sanchez, Regional Manager of CVWS, explained that the transfer station is not included in the franchise agreement because it was built by private funds.

Council Member Land expressed concern about the ability for seniors and the disabled to get backyard service and asked that this be addressed in the agreement.

Mr. Prima reported that there is no charge to the disabled for backyard service, and others may purchase the service at \$10 per month.

Referencing page 17, Section 36, Council Member Land requested that the agreement include language requiring that transfers in ownership to another entity be brought before Council for approval. He also requested that cost of billing reimbursement be reviewed.

In answer to questions posed by Council Member Nakanishi, Alex Oseguera, District Manager of CVWS, reported that the company is addressing oil spill problems by upgrading its fleet. Two new vehicles were received last October, two more will arrive in March, one in April, two in May, and three in July. There is a section in the agreement that relates to equipment and the City's ability to inspect it. He also noted that CVWS has a procedure for handling oil spills, i.e., every truck has a spill kit and drivers are trained to properly contain them.

At the request of Council Member Nakanishi, Mr. Prima indicated that he would work out a vehicle monitoring plan.

Council Member Nakanishi requested that he be provided with historical information related to the franchise percentage, and its decrease in 1994 from 8% to 4.8%.

Mayor Pennino suggested that an annual voucher program be instituted for emptying overweight yard and garden containers. He asked that input be sought from commercial businesses in the community, prior to bringing this matter back to Council. He expressed concern about an automatic 1.5% rate increase without any incentive to reduce costs, and believed that the 4.8% franchise percentage was too low. He asked how credit for recycling is monitored.

Mr. Prima indicated that reporting on the recycling credit is needed.

In response to Mayor Pennino's concern about the early start time for garbage pick up, Mr. Sanchez clarified that commercial collection begins at 5:00 a.m. and residential begins at 5:30 a.m.

City Manager Flynn believed that something needs to be done to reduce the problem of garbage and large items being dumped in rural areas and on east side properties.

Mayor Pro Tempore Hitchcock expressed concern about AB939 and the potential for fines if stipulated diversion rates are not met. Mr. Sanchez cautioned against adding language in the agreement requiring certain recycling programs, as it would burden the City with additional ordinances.

Mayor Pennino suggested that language be included stating that if the City does not meet AB939 goals, the two shall meet and confer to arrive at a solution.

Mayor Pro Tempore Hitchcock requested a copy of the current contract, rate methodology, and a 20-year history on the rates. She believed that the cost of truck replacement was included in the rate methodology.

Council Member Howard asked that the agreement include language specifying that time of waste collection not begin before 5:00 a.m.; with industrial trucks beginning at 5:00 a.m. and residential trucks at 5:30 a.m.

Council Member Nakanishi requested a comparison of rates between Lodi and surrounding cities. He commented that he serves on the San Joaquin County Solid Waste Management Task Force and Lodi is considered number one in the County.

PUBLIC COMMENTS:

- Myrna Wetzel pointed out that leaves are not picked up until November, although many trees begin dropping their leaves earlier.

Mr. Prima explained that leaf pickup has been the responsibility of the City. It is a judgment call on the part of staff, as to when to switchover equipment for leaf pickup. He indicated that he would forward communication on this subject from Street Superintendent George Bradley to Ms. Wetzel.

**D. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS**

None.

**E. ADJOURNMENT**

No action was taken by the City Council. The meeting was adjourned at 8:18 a.m.

ATTEST:

Susan J. Blackston  
City Clerk

**Mayor's & Council Member's Weekly Calendar**

**WEEK OF JANUARY 29, 2002**

**Tuesday, January 29, 2002**

**7:00 a.m.**

**Shirtsleeve Session**

**1. Solid Waste Contract (PW)**

**10:45 a.m.**

**Ribbon cutting and grand opening of Guild Street Café, 17 S. Guild, Suite 101.**

**Wednesday, January 30, 2002**

**9:30 – 12 Noon San Joaquin County Farm Bureau Informational Workshop on Agricultural Land Trusts, 3290 N. Ad Art Rd., Stockton.**

**Thursday, January 31, 2002**

**Reminder**

**2<sup>nd</sup> semi-annual campaign statements due to the City Clerk's Office by 5:00 p.m.**

**6:00 p.m.**

**CVD Executive Committee Meeting, Mallard's Restaurant, Modesto.**

**6:30 p.m.**

**CVD Quarterly Dinner Meeting, Mallard's Restaurant, Modesto.**

**Dinner at 7:00 p.m. Guest Speaker, Assemblymember Dave Cogdill.**

**Friday, February 1, 2002**

**Saturday, February 2, 2002**

**6:30 p.m.**

**Boys and Girls Club Auction Dinner for Central Valley Waste Services, Carnegie Forum.**

**Sunday, February 3, 2002**

**Monday, February 4, 2002**

**Reminder**

**Howard. COG Legislative Workshop, Sacramento, 2/4 – 2/5.**

*Disclaimer: This calendar contains only information that was provided to the City Clerk's office*

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## **Changes to Central Valley Waste Services Franchise Agreement**

### **Identical Rates for Identical Service**

- Commercial and residential customers will pay the same rate for the same 3-cart collection system (see Section 4).

### **Recycling Container Service**

- There is a no charge for commercial customers who use containers for recycling (see Section 4,b).
- A maximum of two recycling containers would be offered to each container customer with no additional fees (see Section 4,b).

### **Recycling and Yard & Garden Cart Limits**

- Each customer may use up to three recycling and three yard & garden carts with no additional fee (see Section 4,a).

### **Establish & Maintain Rates for Three Years**

- Set rates that would be locked in for three years covering April 1, 2002 through March 31, 2005 (see Section 7,a).
- Rate increase would be 1.5% per year (see Section 7,b).
- Rates from April 1, 2005 through March 31, 2010 will be determined by using a percentage of the Consumer Price Index annual change (see Section 7,c).

### **Seven Year Extension to the Franchise Agreement**

- The agreement will be renewable in seven year increments (see Section 38,b)
- Notice of renewal is to be given no later than 18 months prior to expiration (see Section 38,b).

### **Additional Services**

- Services which CVWS had already been performing are now included in the Agreement such as:
  - Recycling and Education Awareness Program (see Section 5,e)
  - AB 939 services (see Section 5,f)
  - Annual curbside clean up (see Section 5,h)
  - Annual dump day (see Section 5,i)
- New services have also been added as follows:
  - Illegal dumping pick up program (see Section 5,g)
  - Transfer station vouchers (see Section 5,i)
  - Leaf disposal (see Section 5,l)

### **Insurance**

- There will be increase in insurance coverage.
- Amount is still being determined (see Section 20,b and c).

**City of Lodi  
Central Valley Waste Services  
Franchise Agreement (DRAFT)**

**Table of Contents**

SECTION	DESCRIPTION	PAGE
1	Incorporation of Recitals	2
2	Definitions	2
3	Service Area	2
4	Service Types	2-3
5	Scope of Service	3-6
	Additional Services	5
	Program Coordination	5
	Schedule, Routes and Literature	5
	Care and Diligence	5-6
	Complaints Received by City	6
6	Billings and Payments	6-7
7	Rates	7
8	Materials to be Collected	8
9	Collection Containers	8
10	Rubbish Too Large or Too Heavy for Collection	8
11	Notification	9
12	Industrial Collection	9
13	Time of Collection	9
14	Complaints	9
15	Disposal Site Designation	10
16	Collection Vehicles	10
17	Laws to be Observed	10
18	Familiarity with Laws and Ordinances	11

19	Taxes	11
20	Insurance	11
21	Contractor to Indemnify City	12
22	Permits	12
23	Personal Liability of Public Officials	12
24	City Not Liable for Delay	12
25	Public Convenience and Safety	12-13
26	Examination of the Site of the Work	13
27	Verbal Agreements	13
28	Assignments and Subcontracting	13
29	Breach of Contract-Termination with Cause	13-15
30	Non-Discrimination in Employment	15-16
31	Employees	16
32	Claims	16
33	Independent Contractor	16-17
34	Construction and Interpretation	17
35	Waiver	17
36	Successors and Assigns	17
37	Time	17
38	Term of Agreement	17-18
39	Notices	18
40	Entire Agreement	18



**CITY OF LODI  
PUBLIC WORKS DEPARTMENT  
(DRAFT AGREEMENT)**

**AGREEMENT FOR SOLID WASTE COLLECTION, RECYCLING AND GREEN WASTE COLLECTION AND PROCESSING SERVICES IN THE CITY OF LODI BY AND BETWEEN THE CITY OF LODI AND USA WASTE OF CALIFORNIA INC., dba CENTRAL VALLEY WASTE SERVICES.**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the CITY OF LODI, hereinafter referred to as "CITY" and. CENTRAL VALLEY WASTE SERVICES, hereinafter referred to as "CONTRACTOR."

**WITNESETH**

WHEREAS, these services have been provided by Contractor and Contractor has represented and warranted to City that it has the experience, responsibility, and qualifications to provide to the residents and businesses in the franchise area, services for the collection and safe transport to disposal facilities of Solid Waste and City determines and finds that the public interest, health, safety and well-being would be best served if Contractor were to provide such services to residents and businesses; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB939), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions, and has established a Solid Waste management process which requires cities and other local agencies to implement plans for source reduction, reuse and recycling as part of their integrated waste management practices; and

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

WHEREAS, City and Contractor desire to enter into a new agreement to provide for specified solid waste collection, curbside recyclable collection and processing, neighborhood cleanup collection, green waste collection and processing, and illegal dumping services;

NOW, THEREFORE, in consideration of the mutual promises herein, the parties hereto agree as follows:

## **Section 1      INCORPORATION OF ABOVE RECITALS**

The foregoing recitals are hereby incorporated into this Agreement by reference.

## **Section 2      DEFINITIONS**

For purposes of this Agreement, the following definitions apply in addition to those not included herein but that are defined by Municipal Code:

- a. Refuse - Any and all discarded items and substances of every kind, including salvageable or recyclable materials, and garden wastes, but not including sewage, septic tank contents, sand trap contents, grease trap contents, infectious wastes or hazardous wastes as defined by state and/or federal law.
- b. Recyclable Materials – Plastic bottles, tin, steel and aluminum cans, glass bottles and jars, newspapers, brown paper bags, corrugated cardboard, chipboard, colored paper and bags, magazines, white and colored paper.
- c. Yard and Garden Waste (Green Waste) – Refuse consisting of grass, leaves, wood chips, green plants, weeds, tree branches and garden trimmings.

## **Section 3      SERVICE AREA**

All customers, except industrial, within the City shall be exclusively serviced by Contractor. At that time, the service area shall be the entire incorporated boundaries of the City of Lodi, including any changes to those boundaries that may occur during the term of this Agreement to the extent allowed by law.

## **Section 4      SERVICE TYPES**

All single family dwelling and duplex customers are to have multi-cart service. All other customers will have the option to utilize cart service or container service

- a. Multi-cart service includes the following:
  - Refuse cart (brown) – 1-20 gallon, 1-35 gallon, 1-64 gallon or 1-96 gallon
  - Recycling cart (green) - up to 3-64 gallon
  - Yard and Garden cart (gray) - up to 3-96 gallon
- b. Container refuse service will be offered in sizes ranging from one (1) cubic yard to fifty (50) cubic yards. A maximum of two (2) recycling and yard and garden containers will be offered to each customer with no additional fees. These containers will be offered in two (2) and four (4) cubic yard sizes.

- c. Container refuse customers may have the option to utilize cart recycling and yard and garden services.
- d. Multi-cart service customers may have the option to use container recycling service on a case by case basis.

## **Section 5      SCOPE OF SERVICE**

- a. Multi-cart collection service of refuse will be weekly at a minimum, whereas recyclables and green waste will alternate on a weekly basis Monday through Friday. Extra and special services will be offered for additional charges as needed or requested by customer.
- b. Container service levels will be determined by the needs of the individual customer. Frequency of collection will be determined by the need of the customer. Service will be available Monday through Saturday at standard rates. Emergency Sunday service will be offered at a premium rate set in Exhibit A.
- c. When a scheduled collection day falls on a holiday (i.e, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day), Contractor may, at its option and upon notice to its customers by publication in a local newspaper of general circulation, collect either on the holiday or on the day immediately prior to, or delay collection schedules one day. Contractor may also have the option to delay collection to the Saturday before or after the holiday.
- d. Service shall include providing all labor, equipment, tools, materials, trucks, containers, and carts, supervision, management, and all other items incidental thereto, and to perform all work necessary, to complete the work as specified, and in the prescribed manner and time for the collection of refuse, recyclables, neighborhood cleanup materials, and green waste, and the provision of other specified services in the City.
- e. Contractor will provide a Recycling and Education Awareness Program. As an incentive and recognition for City and schools participating in the Recycling Education Awareness Program, Contractor will donate on an annual basis, a portion of the revenues available from the sale of recycling material generated from the City to the schools within the City limits of Lodi. The donated amount will be at least twenty-five thousand dollars (\$25,000) per year based on the Contractor's established criteria.
- f. Contractor in coordination with City will provide comprehensive AB 939 services including:
  - Contractor shall submit a draft of the Source Reduction and Recycling Element (SRRE) document for City's review and assist City in the submission.
  - Assist City in preparing the Annual Report.

- Prepare the quarterly and annual tonnage reports.
- g. Contractor will provide an illegal dumping pick-up program coordinated between City and Contractor. The illegal dumping service will be provided on public property only. City will notify Contractor of the illegal dump location, Contractor will be required to collect item(s) within five (5) business days of notification. Contractor will not be required to pick-up toxic or hazardous materials. Upon verification of the identity of the person(s) responsible for the illegal dumping, City will be obligated to prosecute in accordance with local and state litter laws and collect the fees equal to Contractor's extra and special charges in addition to any fees or fines that may be imposed by City. City will pay Contractor for costs incurred if fees are collected.
- h. Contractor will provide an annual neighborhood curbside clean-up collection service once a year. This service will be limited to the equivalent of six 35-gallon refuse carts at the curb. Items must be bagged, bundled, boxed or containerized and weigh less than fifty (50) pounds per container. Items to be disposed must be at the curb, directly in front of the residence and must be away from parked cars and refuse carts. Items must be at the curb by 5:00 a.m. on a regular refuse service date. Contractor will notify all residents of a schedule indicating the dates of the clean up and provide instructions approved by City. This annual service is at no additional charge to all customers. Unacceptable items include dirt, concrete, liquids, toxic or hazardous materials, cathode ray tubes (CRT) and large heavy metals such as auto bodies and engines.
- i. The following two services shall be provided to all customers to assist in helping the City of Lodi discourage illegal dumping and the accumulation of refuse:
- Contractor will provide each customer with one (1) "Transfer Station Voucher". These vouchers will allow each customer with the ability to bring to Contractor's transfer station a volume of up to two (2) cubic yards of refuse per voucher at no cost. Voucher must be presented upon entrance into transfer station. Unacceptable items include commercial waste, dirt, concrete, tires, liquids, toxic or hazardous materials, cathode ray tubes (CRT) and large heavy metals such as auto bodies, engines, transmissions, refrigerators and air- conditioners that still have CFC's.
  - Contractor will provide at its transfer station an annual dump day. At this event customers within the city limits of Lodi may bring a car, pick-up or trailer (not to exceed two (2) cubic yards) load of refuse at a reduced transfer station fee. Proof of residency shall be required. Unacceptable items as defined above.
- j. Contractor shall be responsible for all costs associated with the advertising and promotion of special services and activities within the scope of services.

- k. Contractor will provide transporting, marketing and processing of all collected recyclable materials. Contractor shall have the full and exclusive right to all recyclable or salvageable material collected in connection with the solid waste and shall have the exclusive right to any funds realized from the sale of recycled or salvaged materials.
- l. Contractor will provide disposal services for the City's Annual Fall Leaf Removal at no additional charge to the City. The following conditions will apply:
- Limited to 1200 tons per year.
  - Leaves will be delivered by the City to the Contractor's transfer Station.
  - Leaves must be free of contamination. Loads that are contaminated more than one (1) percent will be charged a disposal fee.
  - Leaves will be accepted at no charge within the dates established for this program.
- m. Additional Services. If City requests new programs then Contractor shall provide such service programs within the City if requested by the City, provided that the City provides increased rates and/or additional funding at a level that is mutually agreeable to City and Contractor. Contractor shall not be obligated to institute any such new program until such time as Contractor's compensation is increased to provide the funding to support such new programs. The funding of any such new programs required by City of Contractor shall be determined by separate negotiated agreements between City and Contractor.
- n. Program Coordination. Contractor understands and acknowledges that Contractor is providing an integral part of a City service. Therefore Contractor shall cooperate with City and its citizens in carrying out the basic task of collecting solid waste, except as provided herein. City shall have no role in Contractor's provision of solid waste service to any other jurisdiction.
- o. Schedules, Routes, and Literature. Contractor shall make available to City maps and schedules of collection routes and keep such information current at all times.
1. Maps and schedules of collection routes shall be available to City not later than thirty (30) calendar days prior to the initiation of collection operations or changes in operation.
  2. Maps and schedules of collection routes shall show the day(s) for regularly scheduled pickup for each route and area.
  3. Not less than one week prior to beginning collection operations or changing routes or schedules that alter the day(s) of collection, Contractor at its expense, will so notify each customer affected. Notice shall be made to individual customers, in writing and by public notification by means of local news media.

- p. Care and Diligence. Contractor shall exercise all reasonable care and diligence when collecting refuse. Contractor must exercise due care so as to prevent spilling, scattering, or dropping of collected materials through collector activity and shall immediately, at the time of occurrence, clean up such spillage, dropping or scattering.

Quality of service provided by Contractor shall be monitored and periodically reviewed by City. Contractor shall maintain quality of service. If City determines that Contractor's quality of service is not being maintained, the City shall provide written notice of such failure to Contractor including a description of the specific deficiencies identified by City and the action necessary to correct such deficiencies. If Contractor fails to correct these deficiencies within ten (10) days of receipt of such notice, such failure shall constitute cause for termination of the Agreement pursuant to Section 29 hereof.

- p. Place of Collection. The normal collection point for cart services shall be at the curbside. Backyard service shall be offered at an additional cost as specified in Exhibit A. The normal collection point for container services will depend on property and business needs that meet City's planning and zoning laws and regulations.
- r. Refuse Quantities and Preparations. Customers will be limited in the amounts of solid waste they place for disposal as noted in previous sections and as prepared for collection as noted herein:
1. No single item, bag, box or bundle of refuse shall weigh more than fifty (50) pounds, combined cart and contents, except for automated and commercial truck containers. Containers will be limited by type of materials and size of container, not by weight.
  2. Loose un-containerized refuse will not be serviced unless previous arrangements have been made with Contractor.

## **Section 6 BILLINGS AND PAYMENTS**

- a. City shall, as part of its municipal utility billing system, bill regularly scheduled customers and collect payments from them for the refuse collection and transportation services provided by this Agreement. Contractor shall provide City with all necessary billing information as soon as possible but no later than the City's regularly scheduled billing date. City will furnish billing schedule to Contractor. City will bill contractor monthly for billing services at current rates and may increase the amount up to the percentage increases shown in section 7. If City determines to increase billing charge, City will notify Contractor of said increase thirty days before increase becomes effective.
- b. All solid waste services will be mandatory to ensure adequate protection of public health and safety as provided by City Ordinance. Contractor shall provide mandatory solid waste collection, processing and disposal services required under this Agreement for the rates set

forth as attached hereto and incorporated herein as Attachment "A ", as the same may be adjusted in accordance with this Section. Rates for any non-mandatory services shall be established by Contractor.

- e. City shall remit to Contractor each Friday, the net collections in the previous week after deducting from collections a 4.8% franchise fee. City hereby agrees to keep and maintain proper records of its collection hereunder and to make such records available to Contractor or its authorized agent for audit at any reasonable time in the office of the City of Lodi Finance Department.
- f. Contractor shall set up a system of accounting to assure that all accounts are in fact being served by Contractor with appropriate refuse collection, curbside recycling, neighborhood cleanup, green waste collection, processing and other services being provided, as otherwise required by this Agreement.
- g. Contractor shall provide the field and office interface in Lodi with its customers. Requests for service shall be made by customers through City. City shall maintain in writing documentation of all such account contacts on a daily basis so that appropriate customer billing and Contractor compensation may be facilitated.

## **Section 7      RATES**

- a. Rates collected for services shall be set in Exhibit A. Additional services not in exhibit A to be determined by Contractor.
- b. There will be a 1.5% increase to the rates on April 1, 2003 and April 1, 2004 .
- c. On April 1, 2005, April 1, 2006, April 1, 2007, April 1, 2008 and April 1, 2009, the rates shall be adjusted in a percentage amount equal to (80%) eighty percent of the annual change in the Consumer Price Index for all Urban Consumers for San Francisco-Oakland-San Jose, California area, All Items (1982-84=100) published by the Bureau of Labor Statistics (the Index) for the twelve (12) month period ending December 31 of the preceding calendar year.
- d. In January of each year, Contractor shall send to City a revised rate schedule reflecting the new rates, as adjusted by the Index as provided in this subsection. City Council will act on rate adjustments to be effective on April 1 of that year.
- e. In the event the Consumer Price Index for all Urban Consumers for San Francisco- Oakland-San Jose, California area, All Items (1982-84=100) is no longer published by the Bureau of Labor Statistics, Contractor and City shall negotiate in good faith to agree upon a suitable replacement index reflective of the cost of living in the franchise area.
- f. Contractor may request and City may grant rate changes when contractor incurs increased costs due to a change in federal, state or local laws, rules, regulations, ordinances (other than

changes in federal or state income tax laws) or extraordinary increases in fuel, landfill and energy costs.

## **Section 8 MATERIALS TO BE COLLECTED**

The Contractor shall furnish all labor, supervision, material, permits, licenses, and equipment necessary to provide basic solid waste, recyclable, neighborhood cleanup, yard and garden waste collection for occupants of specified dwelling units and business establishments within the City, as follows:

- a. Residential and Commercial Refuse, including properly containerized residential and commercial refuse and/or rubbish.
- b. Residential and Commercial Yard and Garden Waste, including grass clippings, weeds, brushes, brush clippings and branch clippings when properly containerized.
- c. Residential and commercial recyclables, properly containerized.
- d. Neighborhood cleanup disposables and recyclables.
- e. Illegal dump services
- f. Contractor shall not collect toxic, or hazardous waste unless and under such conditions as permitted to do so by the State Health Department.
- g. Contractor may refuse to service a location as specified only when refuse contains illegal materials or is not placed in approved containerization or located in the required pickup area.
- h. Contractor shall discontinue solid waste service at any location as set forth in a written notice sent to it by City. Upon further notification by City, Contractor shall resume collection service on the next regularly scheduled collection day.
- i. All containers will be returned to their proper location after dumping.

## **Section 9 COLLECTION CONTAINERS**

All materials to be collected shall be placed in containers by customers as approved by City.

## **Section 10 RUBBISH TOO LARGE OR TOO HEAVY FOR COLLECTION**

Items too large or heavy for proper containerization such as bundles of brush and branches, heavy earthen materials and other large items that are out of the scope of normal services will be collected for a negotiated price with the customer. If customer requests such special service, these special services will be scheduled outside of the normal collection schedule.



## **Section 11     NOTIFICATION**

In the event the residents shall place items for collection that are too large or otherwise unsuitable for loading into packer equipment, or otherwise misuse the collection service, the Contractor will notify the customer by a tag system approved by City as follows:

- Contractor shall provide an opportunity for the customer to correct the deficiency. Contractor will contact the customer by telephone and provide a minimum of two (2) tags reminding customer of the problem, but still provide the collection service.
- On the third tag, Contractor shall give the customer notice of the reasons for refusing to collect, citing the appropriate reasons therefore. A special charge will be assessed to the customer for servicing of container as specified in Attachment A if problem is not resolved.
- The notice shall be given by means of a tag no smaller than 3" X 7" securely fastened to the container or article not collected.

## **Section 12     INDUSTRIAL COLLECTION**

Contractor may provide industrial refuse collection services in the City of Lodi in accordance with City Municipal Code.

## **Section 13     TIME OF COLLECTION**

Contractor shall not commence collection of solid waste in residential areas prior to 5:00a.m. or continue collection after 6:00p.m. All collections shall be made as quietly as possible, and conform to any Federal, State, County or City noise level regulations.

## **Section 14     COMPLAINTS**

- a. Contractor will receive and handle all complaints. Upon receipt of the complaints, Contractor shall investigate and resolve the complaint with the complainant. Contractor shall keep a record of all complaints and forward to City on a quarterly basis. Should Contractor not render collection service within forty-eight (48) hours after a missed collection complaint is reported to its authorized representative, City may make whatever arrangements are necessary, in its opinion to provide the collection service. For all such costs, charges and damages incurred by City, together with the costs of completing the work Contractor shall be liable and all such costs may be charged against any monies due or which may become due Contractor. Contractor shall identify and contact complainant to alleviate the condition causing the complaint.
- b. City shall notify Contractor of any complaint reported to City. It shall be the duty of Contractor to take whatever reasonable steps may be necessary to remedy the cause of the complaint within 24 hours after initial receipt and notify City of its disposition.

## **Section 15     DISPOSAL SITE DESIGNATION**

- a. All refuse collected in the Service Area shall be transported by Contractor to an approved disposal site. Loads taken to disposal sites will be accounted for by weighing and paid for by Contractor at the then current rate. Contractor shall follow all established rules and regulations when operating on any disposal site. Contractor's operators shall follow all directions given by the landfill spotter when delivering solid waste material.
- b. Contractor may dispose of waste collected under the terms of this Agreement at Contractor's Transfer Station. Contractor shall be required to weigh all loads collected in the City and hauled to the Transfer Station. Contractor will keep track and maintain the records of tonnages hauled to and transferred from the Transfer Station. Except for materials retained for recycling, Contractor shall transport collected refuse to the North County Sanitary Landfill for disposal or to such other disposal sites as City may from time to time designate.

## **Section 16     COLLECTION VEHICLES**

- a. Contractor shall provide and maintain during the entire period of this Agreement a fleet of modern packer-type collection vehicles sufficient in number and capacity to efficiently perform the work and render the services required of Contractor by this Agreement. Contractor shall provide evidence satisfactory to City of its ability to furnish adequate backup vehicles and personnel.
- b. Each collection vehicle shall be kept in a sanitary condition, good appearance and good repair at all times. City reserves the right to inspect Contractor's collection vehicles at any reasonable time to ascertain said condition.
- c. The noise level for the collection vehicles during the stationary compaction process shall meet current State and local standards.
- d. Each truck at all times shall be equipped with a shovel and a broom or rake, intended for the collection of spilled refuse. All vehicles shall be equipped with spill kits to be used in the event of a spill and to prevent fluids or oils from flowing into storm-water drains.
- e. Contractor's vehicles and other equipment must be clearly identified with the name and phone number of Contractor's office on each side of the equipment.
- f. Contractor shall furnish to City upon request a list identifying all equipment to be used in fulfilling this agreement and notify City of any additions or deletions.

## **Section 17     LAWS TO BE OBSERVED**

Contractor shall at all times observe and comply with all Federal and State laws, local laws, ordinances, orders, rules, and regulations of the Federal, State, County, or local governments.

## **Section 18 FAMILIARITY WITH LAWS AND ORDINANCES**

The signing of this Agreement shall be considered as a representation that Contractor is familiar with all Federal, State, and local laws, ordinances, and regulations which affect those engaged or employed in the work, or equipment used in the work or which affect the conduct of the work; and, no plea of misunderstanding will be considered on account of ignorance thereof.

## **Section 19 TAXES**

Contractor shall pay all applicable Federal, State and local taxes.

## **Section 20 INSURANCE**

Contractor shall secure and maintain through out the duration of this Agreement, insurance of such types and not less than amounts as hereinafter listed.

- a. Workman's Compensation. Contractor shall carry with a company authorized under the laws of the State of California, a policy to protect Contractor against liability under the Workman's Compensation and Occupational Disease Statutes of the State of California.
- b. Vehicle Liability Insurance. Contractor shall carry, in Contractor's own name, a policy under a comprehensive form to insure the entire vehicle liability for Contractor's operation with limits of not less than \$ \_\_\_\_\_ each person, \$ \_\_\_\_\_ each accident bodily injury, and \$ \_\_\_\_\_ for property damage liability. The policy shall name City, its Elected Officials, Officers, Agents and Employees as additional insureds with respect to the operation of vehicles owned or operated by the Contractor while performing work under the terms of this contract.
- c. General Liability. Contractor shall file with City and maintain on file throughout the term of this contract a comprehensive liability insurance policy issued by a company duly authorized to do business in the State of California, insuring both City and Contractor, with respect to the work performed by Contractor under the terms of this Agreement in an amount of not less than \$ \_\_\_\_\_ combined single limit for injury or death to persons and for damage to property.
- d. A certificate of Insurance naming City, its Elected Officials, Officers, Agents and Employees as additional insured shall be filed with the City for each policy. Each certificate must be presented in a form and with provisions subject to the Risk Managers approval.
- e. Regardless of such approval by City, it shall be the responsibility of Contractor to maintain adequate insurance coverage at all times, and its failure to do so shall not relieve it of any contractual obligations or responsibility. Failure on the part of Contractor to maintain these insurance policies in full effect will be considered as a failure in Agreement performance and will be treated as such by City.

## **Section 21     CONTRACTOR TO INDEMNIFY CITY**

Contractor shall indemnify and save harmless City, its Elected Officials, Officers, Employees and Agents from any and all claims, suits, or actions made or brought against the City, its officers, employees and agents for any and all injuries or damages, including, but not limited, attorney's fees and costs, experts' fees and costs, and consultants' fees and costs incurred by City in the defense of any such claim, suit or action, which results from or is caused by the negligent acts or willful misconduct of Contractor or its agents or subcontractors in doing the work and rendering the services provided for by this Agreement, excluding injuries or damages to the extent that they are caused by the negligent acts or willful misconduct of City or its employees, agents, subcontractors or elected officials. The extent of Contractor's liability under this section shall not exceed the amount of Contractor's proportionate share of fault.

## **Section 22     PERMITS**

The Contractor shall obtain, at its own expense, all permits and licenses required by Federal, State, and local laws or ordinance and maintain same in full force throughout the term of this Agreement.

## **Section 23     PERSONAL LIABILITY OF PUBLIC OFFICIALS**

Neither the City Council of Lodi nor any officers, employees or agents shall be personally responsible for any liability arising under or growing out of this Agreement or operations of Contractor under the terms of this Agreement.

## **Section 24     CITY NOT LIABLE FOR DELAY**

It is further expressly agreed that in no event shall City be liable or responsible to Contractor or to any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings filed by persons not a party to this Agreement, or from or by or on account of any delay for cause over which City has no control.

## **Section 25     PUBLIC CONVENIENCE AND SAFETY**

Contractor shall observe City Ordinances relating to encroachments, obstructing streets, keeping alleys or other rights-of-way open and protecting same, and shall obey all laws and City Ordinances controlling or limiting those engaged in the work. Contractor is granted the right of using the streets or alleys for the purpose if doing work specified in this Agreement, but is not granted exclusive use of such streets or alleys. Contractor shall handle the work in manner that will cause the least inconvenience and annoyance to the general public and to the property owners. There is hereby reserved to City, every right and power which is required to be herein reserved or provided by any ordinance or Charter of City, and Contractor agrees to be bound thereby and to comply with any action or requirements of City in its exercise of such rights or power, heretofore or hereafter enacted or established. The awarding of this Agreement as provided for herein, shall not constitute a waiver or

bar to the exercise of any governmental right of City. No right or exemption shall be granted to Contractor except those specifically prescribed herein.

## **Section 26 EXAMINATION OF THE SITE OF THE WORK**

By the signing of this agreement, Contractor represents that he has carefully examined the collection sector, the disposal sites, specifications and all other Agreement documents, and that Contractor is fully informed concerning the requirements of this Agreement, the physical conditions to be encountered in the work, and the character, quality and the quantity of service to be performed, and of materials and equipment to be furnished. Negligence or inattention of Contractor in determining site conditions prior to signing the contract, in any phase of its performance of the work, shall be grounds for refusal by the City Manager to agree to additional compensation for additional work caused by such negligence or inattention.

## **Section 27 VERBAL AGREEMENTS**

No verbal agreement or conversation with any officer, agent or employee of City, either before or after execution of this Agreement, shall affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon City or Contractor.

## **Section 28 ASSIGNMENTS AND SUBCONTRACTING**

No performance to be rendered or payment due under this Agreement may be assigned or transferred, and Contractor shall not subcontract any work hereunder other than those specified in this agreement, without the prior written approval of the City Manager. Such assignment or subcontract will not be unreasonably withheld by the City Manager. Notwithstanding the foregoing, Contractor shall have the right, without seeking or obtaining approval or authority from City, to assign or transfer this Agreement to any entity that controls, is controlled by or is under common control with Contractor or that succeeds to Contractor by acquisition of all or substantially all of the equity or assets of Contractor.

## **Section 29 BREACH OF CONTRACT - TERMINATION WITH CAUSE**

- a. If Contractor fails to provide the solid waste, recycling, neighborhood cleanup, and green waste services required by this Agreement for a period in excess of five consecutive, scheduled working days, other than by reason of Force Majeure, City may take the following actions:
  1. At its option, take possession of all of Contractor's equipment and facilities used in the performance of this Agreement.
  2. Employ such means as it may deem advisable and appropriate to continue work until the matter is resolved and Contractor is again able to carry out its operations under this Agreement.

3. Charge any and all operating expenses incurred by City against any money then due or to become due Contractor and, should the City's cost for continuing the operation exceed the amount due Contractor, collect the amount due from Contractor and also to assert a lien on all properties of Contractor.
  4. During such period, the liability of City to Contractor for loss or damage to equipment and facilities so used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability.
- b. In the event Contractor shall be adjudged bankrupt under Chapter 7, either by voluntary or involuntary proceedings, then this Agreement shall immediately terminate and in no event shall this Agreement be, or be treated as, an asset of Contractor after adjudication of bankruptcy.
  - c. Failure to perform any material part of this Agreement, other than by reason of Force Majeure, shall be considered a breach of this Agreement. Should Contractor fail to perform any of this Agreement's material obligations, other than by reason of Force Majeure, City may in its option terminate this Agreement after the lapse of the applicable cure period.
  - d. In the event of termination of this Agreement for breach, default, or bankruptcy as specified above, City shall have the right to forthwith take possession of all Contractor's equipment, facilities, and records used in the performance of this contract.
    1. City shall have the right to retain possession of said equipment, facilities, and records until other such items can be acquired by City for operation of the system or another Contractor is engaged to perform the service.
    2. City shall have the right at its option to purchase Contractor's equipment and facilities at the fair market value thereof. However, all waste carts (e.g., refuse, recycling and yard and garden) are the property of the citizens of City and shall be retained in service for use by City or subsequent contractor.
    3. City shall pay Contractor the reasonable rental value of such equipment, facilities during the time the same are used by City. Liability of City to Contractor during this period shall be that of a bailee for hire, ordinary wear and tear specifically exempt from such liability.
  - e. City hereby expressly retains the right to terminate this Agreement with cause prior to the expiration of the full term of this Agreement. Termination may be effectuated by service of notice upon Contractor, in writing, of City's intent to terminate. Service of the notice to terminate shall be deemed to have been made five days after the date of mailing of the notice to Contractor by City. Nothing contained in this Agreement shall be construed to affect the right of City to terminate this Agreement for cause or breach of contract. Contractor and City may agree, upon mutually satisfactory terms, for the termination of all or any part of the business of this Agreement prior to the expiration of the term of this Agreement.

- f. Criminal Conviction. In the event any contract manager, officer or director of Contractor is convicted of fraud, bribery or attempted bribery of a public officer or employee, embezzlement, extortion, racketeering, false claims, false statements, forgery or any similar felony involving business dishonesty, Contractor shall promptly terminate from employment or remove from office the convicted employee, officer or director and eliminate the ability of such employee, officer or director to manage, supervise or influence the decisions or actions of the Contractor or any parent company of Contractor. If Contractor fails to comply with the foregoing obligation, Contractor may be considered in breach of this Agreement and City may terminate this Agreement at City's option as provided in this section.
- g. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by Force Majeure. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of Contractor, and Contractor may make settlement thereof at such time and on any such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive Contractor of the benefit of this Section. "Force Majeure" means acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, explosions, governmental restraint or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of the party affected by the Force Majeure event.
- h. Cure. Except for the occurrence or existence of Force Majeure, in the event of any material failure or refusal of Contractor to comply with any obligation or duty imposed on Contractor under this Agreement, Contractor and City shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach, City shall have the right to terminate this Agreement upon written notice to Contractor if, following such informal meeting: (i) the City shall have given written notice to Contractor specifying the particular default or defaults which, unless corrected, constitute a material breach of this Agreement on the part of Contractor, and (ii) Contractor shall have failed to cure such default or defaults within thirty (30) calendar days thereafter or, if the breach or default cannot reasonably be cured within such period and if diligent efforts to cure promptly commence, then the cure period shall continue as long as such diligent efforts to cure continue, but not beyond a period of ninety (90) calendar days.

### **Section 30 NON-DISCRIMINATION IN EMPLOYMENT**

Contractor, in performing under this Agreement, shall not discriminate against any worker, employee or applicant, or any member of the public because of race, creed, color, religion, sex or national origin, nor otherwise commit an unfair employment practice. Contractor will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to

the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of services, and all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or service in connection with this contract.

### **Section 31     EMPLOYEES**

- a. All subcontractors, superintendents, foremen, and workmen employed by Contractor shall be competent and careful workmen skilled in their respective trades,
- b. Contractor shall not employ any person who repeatedly engages in misconduct or is incompetent or negligent in the due and proper performance of its duties.
- c. Contractor shall enforce a policy which prohibits an employee from being under the influence of, intoxicated by, or otherwise impaired by drugs and/or alcohol while on duty or on company property. Any employee with a positive drug/alcohol screen will be subject to termination.
- d. Employees driving Contractor's vehicles shall at all times possess and carry an appropriate and valid vehicle operator's license issued by the State of California.
- e. Contractor's employees, officers, agents and subcontractors shall, at no time, be allowed to identify themselves or in any way represent themselves as being employees or agents of City.

### **Section 32     CLAIMS**

Contractor shall pay all just claims for the payment of employee and other labor for the payment of furnished materials service and equipment, for rentals, disposal and all other operating expenses associated with and complying with the terms of this Agreement.

### **Section 33     INDEPENDENT CONTRACTOR**

- a. All services delivered by Contractor under this Agreement shall be provided under the coordination of City. It is understood and agreed that Contractor is an independent contractor and that no relationship of employer-employee exists between City and Contractor hereto. Contractor hereby holds City harmless from any and all claims that may be made against City, its Elected Officials, Officers, Employees or Agents based upon any contention by any third party that an employer-employee relationship exists be reason of this Agreement.
- b. It is further understood and agreed by the parties hereto That Contractor in the performance of its obligations hereunder is subject to the control or direction of City merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results. No permitted or required approval by City of Contractor pursuant to this Agreement shall be construed as making the City responsible for the manner in which Contractor performs its services or for any acts, errors or



omissions of Contractor, such approvals are intended only to give City the right to satisfy itself with the cost and status of work performed by Contractor.

- c. If, in the performance of this Agreement, Contractor employs any third persons, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment, or requirements of law, shall be determined by Contractor, and City shall have no right or authority over such person or the terms of such employment. except as provided in Sections 6 and 20 of this Agreement.
- d. It is further understood and agreed that Contractor shall issue W-2 Forms for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

#### **Section 34      CONSTRUCTION AND INTERPRETATION**

It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply on construing or interpreting this Agreement.

#### **Section 35      WAIVER**

The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **Section 36      SUCCESSORS AND ASSIGNS**

This Agreement shall bind and inure to the benefits of the respective successors and assigns of the parties.

#### **Section 37      TIME**

Time is of the essence in the performance of each and every term of this Agreement,

#### **Section 38      TERM OF AGREEMENT**

- a. The term of this Agreement shall be from April 1, 2002 through March 31, 2010 .
- b. At the City's option, this agreement may be renewable for seven-year increments by giving the Contractor notice of renewal not later than 18 months prior to the expiration of the term then current.

- c. At the end of the term of this Agreement, if City implements alternative service programs in the Contractor Service Area, Contractor shall have no financial claim against City of any type or amount. Contractor specifically acknowledges and understands in this regard that Contractor shall provide the required services under this Agreement, during the term of this Agreement, at the herein agreed compensation, and do so under circumstances where, despite having provided quality service to City, the Agreement may expire on March 31, 2010, at which point City would have no remaining financial, legal or other obligation to the Contractor and Contractor would have no expectations of any such further obligation on the part of City

### **Section 39    NOTICES**

Notices concerning this Agreement shall be deemed to have been served when deposited in the United States Mail, first class postage prepaid, and addressed as follows:

<b>To City</b>	<b>H. Dixon Flynn</b>	<b>To Contractor</b>	<b>Central Valley Waste Services</b>
	City Manager		1333 East Turner Road
	221 West Pine Street		Lodi, CA 95240
	Lodi, CA 95240		

### **Section 40    ENTIRE AGREEMENT**

This Agreement constitutes the sole, final, complete, exclusive, integrated expression and statement of the terms and conditions of this Agreement and understanding between City and Contractor concerning the subject matter addressed herein, and supersedes all prior negotiations, representations, or agreements, written or oral, relating to the subject matter of this Agreement. This Agreement shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by both parties hereto. This Agreement may be amended from time to time by mutual agreement of City and Contractor; and, with the consent of Contractor, but at the sole, independent election of the Lodi City Council to do so, may be renewed.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

**CENTRAL VALLEY WASTE SERVICES**

**CITY OF LODI**

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_